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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,465	01/28/2004	Thomas Foxen	005127.00278	3624
22909	7590	01/25/2006		
BANNER & WITCOFF, LTD. 1001 G STREET, N.W. WASHINGTON, DC 20001-4597			EXAMINER KAVANAUGH, JOHN T	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/767,465	FOXEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ted Kavanaugh	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/13/4, 4/29/5, 1/4/06</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

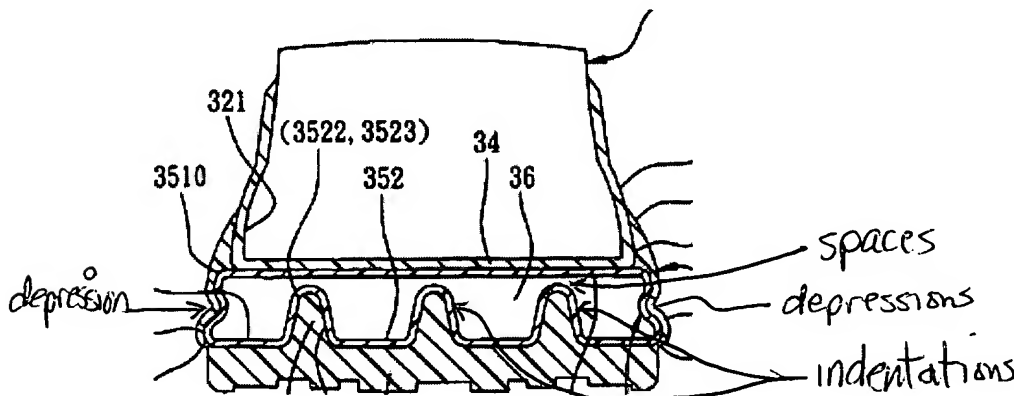
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1,7,11,15,16,18,23,24 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6918198 (Chi).

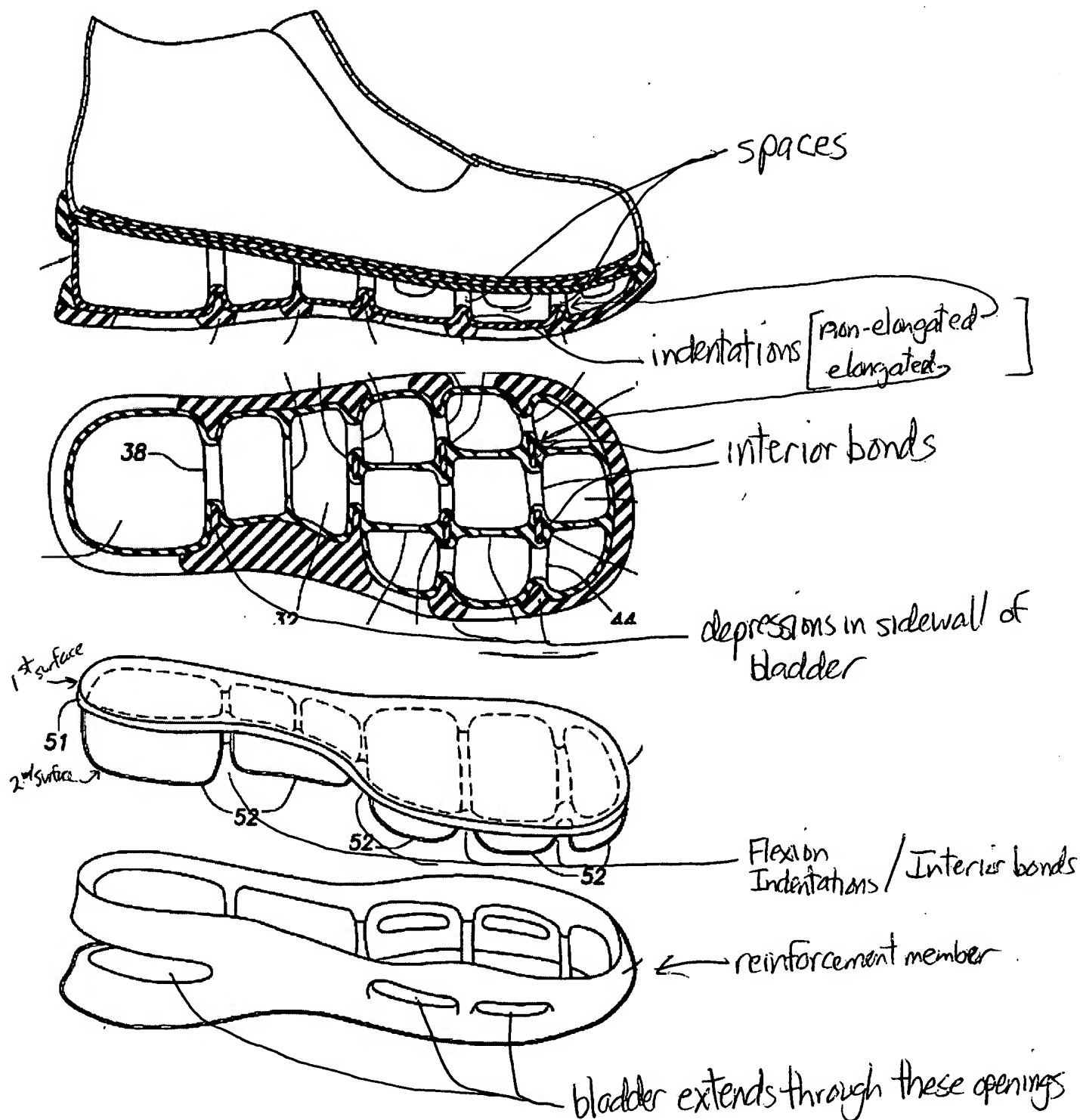
Chi teaches a sole component as claimed including a bladder (36) having a flexion indentation and a reinforcing structure (312) at least partially recessed into the barrier material as claimed. See figure 4 marked-up below.



3. Claims 1,2,7-12,14-24,26-37,39,40,41,43,44,47 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6009637 (Pavone).

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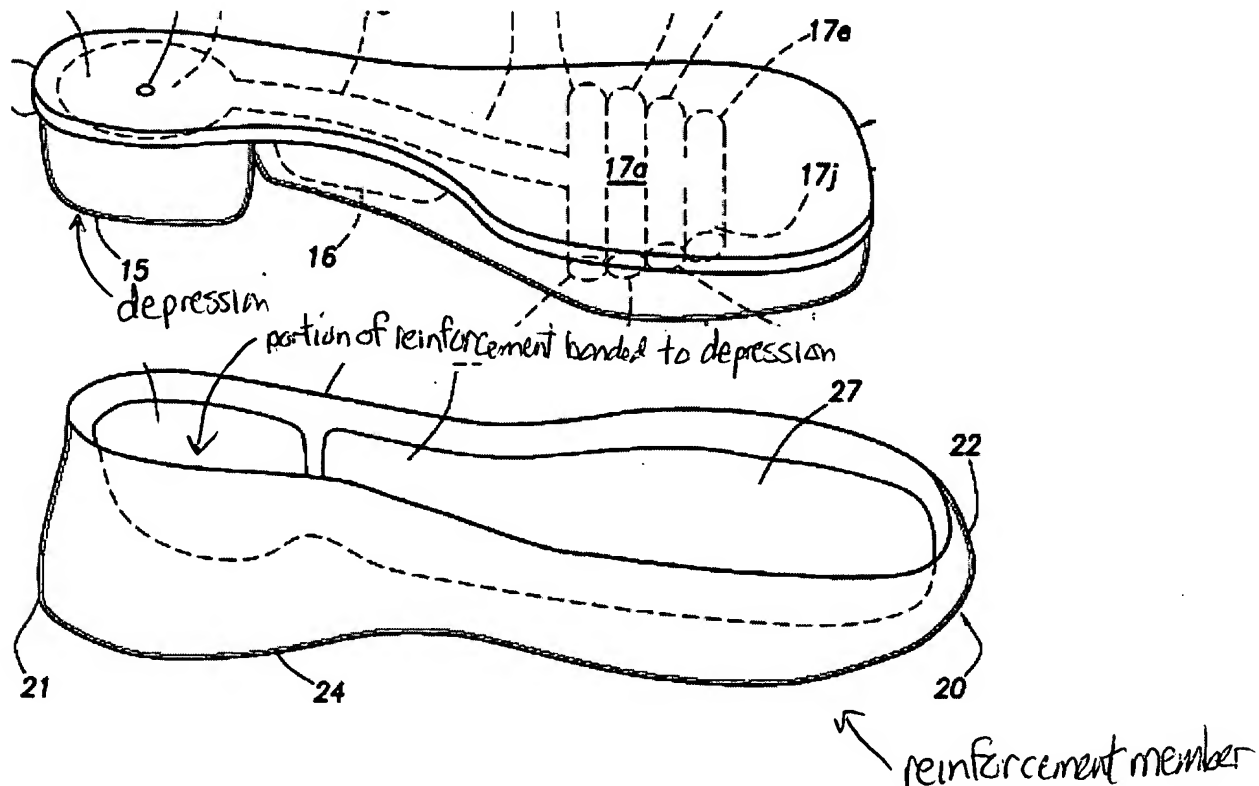
Pavone teaches a sole component as claimed including a bladder having a flexion indentation and a reinforcing structure at least partially recessed into the barrier material as claimed. See the marked-up figures below.



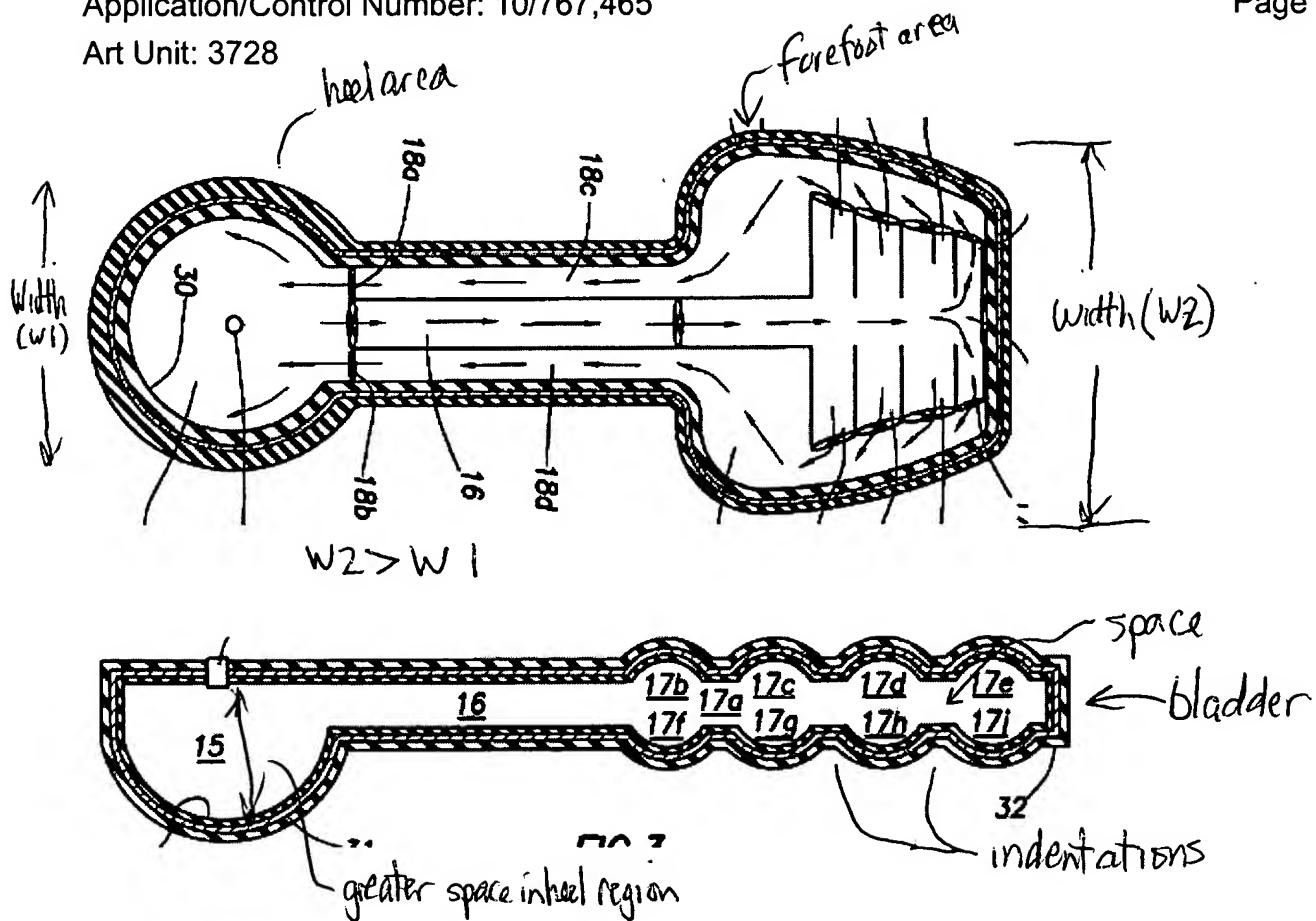
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4. Claims 1,2,7-14,26,28,31,33 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6192606 (Pavone).

Pavone teaches a sole component as claimed including a bladder having a flexion indentation and a reinforcing structure at least partially recessed into the barrier material as claimed. See the marked-up figures below. Regarding the bladder having two chambers with different pressure, Pavone teaches valves between different chambers in the bladder that regulate the different pressures, see col. 3, lines 29-



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5. Claims 37-41 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4936029 (Rudy).

Rudy teaches a sole component having a bladder with interior bonds (see figures 16-16E) having a first elongate configuration and a second non-elongate configuration (see the elongated bonds which have a elongated configuration in one direction and a non-elongated configuration in another direction – much like applicant's).

6. Claims 37-42 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4123855 (Thedford).

Thedford teaches a sole component having a bladder with interior bonds (36,38,62,63,64,66,124,106,108) having a first elongate configuration and a second non-elongate configuration (see the elongated bonds which have a elongated

configuration in one direction and a non-elongated configuration in another direction – much like applicant's). Regarding claim 42, bonds 64,124,106,108 are interior bonds in the forefoot region that are elongated in the longitudinal direction of the sole component.

7. Other prior art such as US 6374514 could also been applied to claims 37+

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3-6,27,32,35,36,45,46,48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pavone '637 in view of US 4817304 (Parker et al.).

Pavone teaches an article of footwear as claimed (see the rejection above) except for interior bonds formed by joining the first and second surface of the bladder together. Parker teaches footwear bladder (insert 20) with interior bonds formed by joining the first and second surface of the bladder together; see col. 4, lines 29-41. There is at least 3 interior bonds with an elongate configuration in the medial-lateral direction and a non-elongate configuration in the longitudinal direction; see figure 2 It would have been obvious to provide the bladder (module 31) of Pavone with interior bonds, as taught by Parker, to better conform the bladder to the individual wearer's foot.

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The interior bonds as taught above will naturally form indentations that inherently will be flexible.

10. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chi '198 in view of US 4722131 (Huang)

Chi teaches a sole component as claimed (see the rejection above) except for two chambers with different fluid pressures. Huang teaches an air cushion shoe sole with at least two chambers with different fluid pressure, see the abstract. It would have been obvious to provide the sole of Chi with at least two chambers with different fluid pressure, as taught by Huang, to provide a more specialized fit for the wearer.

#### ***Conclusion***

11. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:

-“The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.”

--“A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.”

-Moreover, “The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06” MPEP 714.02. The “disclosure” includes the claims, the specification and the drawings.




12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571) 273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (571) 272-4556. The examiner can normally be reached from 6AM - 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

  
Ted Kavanaugh  
Primary Examiner  
Art Unit 3728

TK  
January 19, 2006